



BRIEFING: JUNE 9, 2015, BOARD MEETING AGENDA ITEM #4

TO: Chairman Richard and Board Members

FROM: Tom Fellenz, Chief Counsel

DATE: June 9, 2015

RE: Legal Services Update and Consider Approval of a Time Extension for the Nossaman LLP Legal Services Contract

Background

The California High-Speed Rail Authority (Authority) strives to best serve the public interest by delivering all aspects of the high-speed rail system on schedule, at the lowest possible cost, and with a quality that meets or exceeds acceptable industry and government standards. Legal services and support is a key component of ensuring the Authority meets those goals.

Until 2011 the Authority's in-house legal services were entirely met by the Attorney General's office. As the Authority's program expanded both in size and subject matter, so did its legal services. Currently, the Authority has five State employed in-house attorneys. Recently the Department of Finance approved hiring an additional two State employed in-house attorneys.

The Authority continues to use legal services from the Attorney General's office, particularly in litigation, which the Attorney General's office has been meeting with minimal support from outside legal counsel. The Attorney General's office also provides non-litigation advice in the areas of CEQA compliance, Open Meetings Act compliance, Personnel Law and Prop 1A, among other areas.

In addition, the Authority has a legal services interagency agreement with the Department of General Services to provide assistance with goods and professional services procurements.

The Authority has an interagency agreement with the State Department of Transportation (Caltrans) to provide real property legal services including litigation.

The Authority (and Attorney General's office) recognized that the Authority needed specialized legal services not available from the Attorney General's office. Broadly speaking, the specialized services involved assistance with the complex design-build construction procurement process. They also are involved in necessary environmental permitting from federal and state agencies (permits being prerequisites to construction); by way of analogy, the Department of

Water Resources employs outside counsel for these permitting services for the Bay Delta Conservation Plan. Since 2009, the Nossaman LLP firm (Nossaman) has been engaged to assist the Authority with these matters. As the Authority's needs expanded into other technical areas, such as Surface Transportation Board (STB) advice and filings, Nossaman has been available and well-equipped to assist. The Authority has also hired other private law firms to assist with legal matters in the environmental area to support the Attorney General's office or for trial purposes. Outside legal services are used in Public Utilities Commission Rulemaking and Freight Railroad Agreements.

Non-Government Legal Services Contracting Plan

The Authority's Legal Division conducted a competitive process to obtain best value qualified legal services that cannot be met with current government legal services in the following practice areas:

- P3 Procurement and transaction planning.
- Construction Package (CP) contract and procurement legal advice for CP 5 onward, including track and systems, tunneling, et al.
- Environmental permitting legal support – i.e., state and federal environmental permits and mitigation planning related to northern California and other areas.
- Surface Transportation Board (STB) advice and filings.

Among the factors considered by the Legal Division in interviewing candidate firms are: expertise in the specific subject areas noted above; understanding of California laws and regulations; and, understanding of/experience with the regions and agencies involved in oversight and delivery of the program. The Legal Division will manage the contracts as a package to achieve compliance with the Board's 30% goal for small business. The Legal Division is in final negotiations with several legal firms to provide these services. All of the contracts will have budgets within the contract authority delegated by the Board to the CEO. These private legal services will be managed to assure best value to the State including providing necessary services by qualified State employed Attorneys to the maximum extent possible.

Please note that state laws treat the procurement of legal services differently than procurement of most other services, and specifically exempt legal services from competitive bidding requirements. However, the Authority staff strives to obtain the best value out of legal services the Authority hires, balanced against the need to protect the Authority against business and legal risks. The Authority process for obtaining legal services is still competitive (e.g., interview of multiple attorneys/firms, comparison of rates, evaluation of experience and skills, etc.) but not in the formal sense.

Amendment to the Nossaman LLP Contract for Time Only

As the Authority works to complete legal services contracts for the work described above, an amendment to the Nossaman contract for time only is necessary to ensure some remaining legal work tasks are completed and institutional knowledge is transferred.

The current Nossaman legal services contract budget is \$19,000,000 (the original contract amount was \$1.2 million; the Board subsequently approved three amendments: \$4.7 million, \$8.6 million and \$2 million; the CEO approved one \$2.5 million amendment) and will expire on June 30, 2015. Through April 30, 2015, \$2,198,736.86 remains in the \$19 million Nossaman legal services budget.

Staff recommends that the Nossaman contract be amended for time only to ensure program consistency, avoid an interruption of legal services, and transfer institutional knowledge critical to project delivery.

Discussion

In order to ensure the Authority completes outside legal services contracts described above for future legal work not covered by the Attorney General's office, the Nossaman contract must be amended to enable the legal services to proceed in an uninterrupted manner, and Authority Board action is necessary. Therefore, staff recommends that the Board authorize the Chief Executive Officer, or his qualified designee, to negotiate a contract amendment for a one year time extension to June 30, 2016.

Nossaman is a well-respected law firm with over seventy years of experience delivering the highest quality legal expertise and policy advice for clients across California and the nation, particularly for large infrastructure projects. The firm provides practical, innovative and cost-effective advice relative to a variety of practice areas, including environmental permitting, design-build construction and project delivery.

Nossaman has a longstanding commitment to community involvement and pro bono work, diversity initiatives and environmentally-friendly practices in the legal profession and community. During its contract term, the firm also has continued to strive to meet the Authority's Board-adopted 30 percent Small and Disadvantaged Business (SBE) participation goal. The requested contract amendment will continue to include the 30 percent SBE participation goal adopted by the Authority Board of Directors.

Recommendation

It is the recommendation of Authority staff that the Board adopt a Resolution approving an amendment of the Nossaman contract for time only to June 30, 2016. This will allow sufficient time for Authority staff to enter into additional outside legal services contracts, to ensure some remaining legal work tasks are completed and institutional knowledge is transferred.

Attachments

– Resolution #HSRA 15-10